

## REMARKS

### A. Background

Claims 24-29, 31, and 42-45 were pending and considered, Claim 30 and 32-40 having been withdrawn from consideration previously in this prosecution as being directed to restricted subject matter or nonelected species of the disclosed invention.

The considered claims were rejected variously for obviousness-type double patenting, some of those claims were rejected over the art, and various formal objections were interposed to the specification, the drawings, and the claims.

In response, amendments to the specification and drawings are submitted herewith, the rejecting reference has been distinguished over the pending claims and a plurality of Disclaimer Documents" are being transmitted herewith.

### B. Amendments to the Application

#### 1. Specification

The specification was objected to as failing to provide sufficient antecedent basis for the recitations of the pending claims.

Accordingly, and in cooperation with the above-listed amendments to the drawings, Paragraph Nos. 0064 and 0065 of the specification have been amended as set forth above, whereby to more clearly correlate the textual disclosure to the amended drawings.

All amendments to be effected to the specification are fully disclosed in the specification as originally filed, and accordingly, do not add new matter. Entry of those amendments is accordingly requested.

Briefly stated, relative to the pending claims, outer wall 146 of catheter body 126 illustrated in the elected species depicted in Figures 13 and 14 corresponds to an outer tube. Bulbous middle portion 153 of septum 148 illustrated in those figures corresponds to an inner tube. The portion of septum 148 on the right side of bulbous middle portion 153 in Figure 14 corresponds to a first septum extending between the inner and outer tube; and the portion of septum 148 shown in Figure 14 on the left side of bulbous middle portion 153 corresponds to a second septum extending between the inner tube and the outer tube. IV lumen 154 corresponds to a first lumen, extraction lumen 150 corresponds to a second lumen, and return lumen 152 corresponds to a third lumen. Circular IV aperture 164 corresponds to a first aperture, extraction apertures 144 correspond to a plurality of second apertures, and return apertures 145 correspond to a plurality of third apertures.

Accordingly, it is respectfully submitted that the specification as amended herein now affords sufficient antecedent basis for the subject matter recited in the pending claims.

## 2. Drawings

The drawings were objected to as failing to include a number of reference characters that could facilitate a closer correlation between the disclosed technology and the subject matter recited in the pending claims.

Accordingly, Figures 13 and 14, which depict the elected species of the disclosed technology, have been amended as described above and as set forth in the accompanying replacement sheet and annotated sheet showing changes. These are transmitted herewith under cover of a Letter to the Official Draftsperson.

These amendments to the drawings are fully disclosed in the application as originally filed and do not add new matter. Accordingly, the approval of the Examiner is hereby respectfully requested for entry of the amendments proposed to Figures 13 and 14.

C. Actions on the Merits

1. Double Patenting Rejections

Four (4) distinct double patenting rejections were entered in the Office Action.

In response transmitted herewith are four (4) corresponding Terminal Disclaimer documents, each in full compliance with 37 C.F.R. § 1.321(b) duly executed by an authorized representative of the Assignee of the above-referenced application.

The double patenting rejections will be discussed individually below.

(a) Double Patenting Relative to United States Patent No. 5,195,962

Pending and considered Claims 24-29, 31, and 42-45 were rejected under the judicially-created doctrine of double patenting relative to Claims 1-33 of United States Patent No. 5,195,962 to Marin et al. (hereinafter “the Martin ‘962 Patent”). In response thereto, transmitted herewith is an appropriately worded Terminal Disclaimer “A) executed on behalf of the Assignee of the above-captioned application.

It is respectfully submitted that the Terminal Disclaimer “A” overcomes the double patenting rejections entered relative to the Martin ‘962 Patent. Accordingly, the withdrawal of that double patenting rejection is respectfully requested.

(b) Double Patenting Relative to United States Patent No. 5,472,417

Pending and considered Claims 24-29, 31, and 42-45 were rejected under the judicially-created doctrine of double patenting relative to Claim 1 of United States Patent No. 5,472,417 to Martin et al. (hereinafter “the Martin ‘417 Patent”). In response thereto, transmitted also herewith is an appropriately worded Terminal Disclaimer “B” executed on behalf of the Assignee of the above-captioned application.

It is respectfully submitted that the Terminal Disclaimer “B” overcomes the double patenting rejections entered relative to the Martin ‘417 Patent. Accordingly, the withdrawal of that double patenting rejection is respectfully requested.

(c) Double Patenting Relative to United States Patent No. 5,797,869

Pending and considered Claims 24-29, 31, and 42-45 were rejected under the judicially-created doctrine of double patenting relative to Claims 1-20 of United States Patent No. 5,797,869 to Martin et al. (hereinafter “the Martin ‘869 Patent”). In response thereto, transmitted also herewith is an appropriately worded Terminal Disclaimer “C” executed on behalf of the Assignee of the above-captioned application.

It is respectfully submitted that the Terminal Disclaimer “C” overcomes the double patenting rejections entered relative to the Martin ‘869 Patent. Accordingly, the withdrawal of that double patenting rejection is respectfully requested.

(d) Double Patenting Relative to United States Patent No. 6,206,849

Pending and considered Claims 24-29, 31, and 42-45 were rejected under the judicially-created doctrine of double patenting relative to Claim 1 of United States Patent No. 6,206,849 to Martin et al. (hereinafter “the Martin ‘849 Patent”). In response thereto, transmitted also herewith is an appropriately worded Terminal Disclaimer “D” executed on behalf of the Assignee of the above-captioned application.

It is respectfully submitted that the Terminal Disclaimer “D” overcomes the double patenting rejections entered relative to the Martin ‘849 Patent. Accordingly, the withdrawal of that double patenting rejection is respectfully requested.

## 2. Rejections Over the Art

Claims 24-29, 31, and 42 were rejected under 35 U.S.C. § 102(e) as being anticipated by teachings in United States Patent No. 4,717,379 to Ekholm (hereinafter “the Ekholm Patent”). In the alternative, Claims 24-29, 31, and 42 were rejected under 35 U.S.C. § 103(a) as being obvious over teachings in the Ekholm Patent.

The Ekholm Patent discloses a catheter that is intended to be inserted into a body cavity while minimizing the otherwise expected desiccation and irritation of the mucous membranes on the inside of that body cavity. Catheter 1 illustrated throughout the figures has a central, longitudinally extending fluid flow channel 2 enclosed in an inner tube 5. Inner tube 5 is encircled about the exterior circumference thereof by a plurality of axial passages 3 that are intended to convey lubrication to the exterior surface of catheter 1 during the insertion and residence of catheter 1 in a body cavity. The outermost portions of the walls of axial passages 3 in effect form an outer tube 6,

which is perforated by a large number of very small capillary holes 4 to permit lubricant to reach the exterior of catheter 1 from axial passages 3.

Each axial passageway 3 is separated from the adjacent axial passages 3 to either side thereof by a longitudinal partition 7 that extends between outer tube 6 and inner tube 5. In Figures 1 and 2 the Ekholm Patent depicts no less than eight (8) such axial passages 3, but the Ekholm Patent provides no other guidance as to the number of such axial passages 3 that are suitable to the intended function of catheter 1.

The Ekholm Patent thus fails to disclose any interior space between an outer tube and an inner tube that by first and second septums extending between the inner and outer tubes is separated into one lumen located on one side of the inner tube and the septums and another lumen located on the other side of the inner tube and those same septums. Accordingly, the Ekholm Patent discloses no catheter in which an interior space between an inner tube and an outer tube that is separated by a first septum and a second septum “into a second lumen located on one side of said first septum, said inner tube and said second septum, and a third lumen located on the opposite side of said first septum, said inner tube and said second septum” as recited in paragraph (d) of pending independent Claim 24 and in subparagraph (a)(iv) of pending independent Claim 42.

Neither does the Ekholm Patent include any suggestion to modify the structures depicted and disclosed therein toward the end of providing a catheter structure in which an interior space between an inner tube and an outer tube is configured in the manner recited in independent Claims 24 and 42. It is respectively submitted that the only suggestion of record in the present prosecution to thusly modify the Ekholm Patent would be a suggestion provided by the teachings of the present application itself.

Accordingly, it is respectfully submitted that the combination of technology recited in pending Claims 24 and 42 is neither anticipated nor rendered obvious by the Ekholmer Patent. Therefore, it is respectfully submitted that independent Claims 24 and 42 are in condition for allowance.

Claims 25-29 and 31 depend directly or indirectly from independent Claim 24 and are respectfully submitted to being neither anticipated nor rendered obvious by the Ekholmer Patent at least for the reasoning stated above relative to independent Claim 24.

Claims 43-45 depend directly or indirectly from independent Claim 42 and, accordingly, are respectfully submitted to be neither anticipated nor rendered obvious by the Ekholmer Patent at least for the reasoning stated above relative to independent Claim 42.

D. Conclusion

The reconsideration of the Examiner is respectfully requested and the allowance of Claims 24-29, 31, and 42, as well as claims withdrawn from consideration but directed to a reasonable number of the nonelected species of the disclosed invention.

In the event that the Examiner finds any remaining impediment to a prompt allowance of this application which could be clarified by a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

DATED this 20<sup>th</sup> day of August, 2004.

Respectfully submitted,

  
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